

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

STERLING AND WILSON SOLAR  
SOLUTIONS, INC.,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Civil Action No. 3:23-cv-01110-MEM

**JOINT STIPULATION AND AGREED ORDER  
REGARDING INTERVENTION AND TRANSFER UNDER 28 U.S.C. § 1404**

This stipulation and agreed order is made this 7th day of July 2023, by and between Plaintiff Sterling and Wilson Solar Solutions, Inc. (“Sterling”), Defendant Bank of America, N.A. (“BOA”), and proposed intervenor Montague Solar, LLC (“Montague,” and with Sterling and BOA, the “Parties”).

WHEREAS, on or about June 22, 2023, Montague submitted a draw request (the “Draw Request”) that BOA pay to Montague \$24,340,000.00 under the Irrevocable Standby Letter of Credit Ref. No. 68176052 dated May 12, 2021 (“BOA Letter of Credit”).

WHEREAS, on July 5, 2023, Sterling filed a lawsuit against BOA in the above-captioned case, seeking a permanent injunction prohibiting BOA from making payment to Montague under the BOA Letter of Credit. *See* ECF 1.

WHEREAS, on July 5, 2023, Sterling filed a motion for a temporary restraining order and preliminary injunction in the above-captioned case to temporarily enjoin payment under the BOA Letter of Credit. *See* ECF 4.

WHEREAS, Montague is the beneficiary under the BOA Letter of Credit.

WHEREAS, on July 3, 2023, Sterling filed a related action against JPMorgan Chase Bank, N.A. (“JPM”), seeking similar relief regarding a different letter of credit issued by JPM (“JPM Letter of Credit”), in the United States District Court for the Southern District of New York, Case No. 23-cv-05711-VEC (“New York Action”). *See* New York Action, ECF 1.

WHEREAS, Lund Hill Solar, LLC (“Lund Hill”), an affiliate of Montague, is the beneficiary under the JPM Letter of Credit.

WHEREAS, on July 5, 2023, Sterling filed a motion for a temporary restraining order and preliminary injunction in the New York Action to temporarily enjoin payment under the JPM Letter of Credit. *See* New York Action, ECF 11.

WHEREAS, on July 5, 2023, the New York Court (Judge Valerie E. Caproni) held a hearing at which Sterling, Lund Hill, and JPM attended. As a result of agreements reached on the record at that hearing, the New York Court (i) denied as moot Sterling’s motion for a temporary restraining order, (ii) enjoined JPM “from distributing any funds pursuant to the pending request for payment under the [JPM] Letter of Credit until further order of the Court, which will not be before July 19,

2023,” and (iii) set a briefing schedule ahead of a July 19, 2023 hearing. *See* New York Action, ECF 27.

WHEREAS, BOA takes no position on the underlying dispute between Sterling and Montague and takes no position as to whether Sterling is entitled to any relief it seeks in this Action or the New York Action, including injunctive relief.

WHEREAS, the Parties have conferred and have agreed as follows in the interest of judicial efficiency: Montague has the right to intervene in the above-captioned case under Federal Rule of Civil Procedure 24(a)(2); the above-captioned case should be transferred to the Southern District of New York by consent under 28 U.S.C. § 1404; the Draw Request is held in abeyance and BOA shall not distribute any funds under the BOA Letter of Credit until further order of the New York Court.

THEREFORE, IT IS STIPULATED AND AGREED, AND UPON APPROVAL BY THIS COURT, IT IS SO ORDERED AS FOLLOWS:

1. Montague is permitted to intervene in the above-captioned case pursuant to Federal Rule of Civil Procedure 24(a)(2).
2. The Clerk of this Court shall transfer the above-captioned case to the Southern District of New York as a related matter to the New York Action (S.D.N.Y. Case No. 23-cv-05711-VEC). The Clerk of this Court shall then administratively close the above-captioned case.

3. All proceedings in the above-captioned case will be held in abeyance until the Clerk of the Court administratively closes this case.

4. The Draw Request is hereby held in abeyance and BOA shall not distribute any funds under the BOA Letter of Credit until further order of the New York Court, which will not be before July 19, 2023.

*[Signature page follows.]*

Acknowledged and Agreed By:

Dated: July 7, 2023

/s/ Daniel T. Brier

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*Counsel for Plaintiff Sterling and  
Wilson Solar Solutions, Inc.*

*Counsel for Plaintiff Sterling and  
Wilson Solar Solutions, Inc.*

SO ORDERED:

Dated: \_\_\_\_\_, 2023  
Scranton, Pennsylvania

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HON. MALACHY E. MANNION  
UNITED STATES DISTRICT JUDGE